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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COLONY INSURANCE COMPANY,

Plaintiff(s),

v.

JUAN M. SANCHEZ, et al.,

Defendant(s).

Case No.: 2:18-cv-01950-JCM-NJK

Order

Pending before the Court is an order for attorney Kevin Barrett to show cause why he should not be sanctioned for potentially violating Rule 11 of the Federal Rules of Civil Procedure and for earlier non-compliance with Local Rule IA 11-1(b). Docket No. 27. Mr. Barrett has filed a response, along with a declaration. Docket Nos. 29, 30.

An attorney “who is admitted to practice in Nevada but who does not maintain an office in Nevada” must comply with the requirements outlined in Local Rule IA 11-1(b). That rule does not define the term “maintain an office,” but does indicate that having a post office box or mail-drop location does not suffice. Local Rule IA 11-1(b)(1). Other cases also make clear that an attorney does not “maintain an office” by agreeing with a local attorney to list that attorney’s office as a physical address for the out-of-state attorney. *Boyle v. Hilton Hotels Corp.*, Case No. 2:16-cv-02250-RFB-NJK, Docket No. 21 (D. Nev. Apr. 20, 2017). It appears that there is otherwise not legal authority addressing the contours of the term “maintain an office” specific to its use in Local Rule IA 11-1(b).

1 That does not mean that the Court is without guidance, however. Case law addressing local
2 rules governing the analogous *pro hac vice* process makes clear that “the mere designation of a
3 local office” is insufficient to constitute “maintain[ing] an office.” *O’Dea v. Conagra Foods, Inc.*,
4 2014 U.S. Dist. Lexis 186702, at *5 (S.D. Cal. Jan. 30, 2014). “A bona fide office is more than a
5 mere address – it is a functioning office.” *Moreno v. AutoZone, Inc.*, 2007 U.S. Dist. Lexis 98250,
6 at *37 (N.D. Cal. Dec. 5, 2007) (quoting *Tolchin v. Supreme Court of N.J.*, 111 F.3d 1099, 1107
7 (3d Cir. 1997)). “Mere rented office space lacks any of the indicia of office location, including
8 where clients are met, where files are kept, where telephones are answered, where mail is received,
9 and where counsel can be reached during business hours.” *Id.*; see also *KRBL Ltd. v. Overseas*
10 *Food Dist. LLC*, 2016 U.S. Dist. Lexis 93374, at *14-17 (C.D. Cal. May 26, 2016) (listing
11 information to be provided by attorney in relation to order to show cause for misrepresenting his
12 maintenance of an office within the district). Succinctly stated, a bona fide office is where “regular
13 work is . . . conducted.” *Moreno*, 2007 U.S. Dist. Lexis 98250 at *37-38; see also *KRBL Ltd. v.*
14 *Overseas Food Dist. LLC*, 715 Fed. Appx. 696 (9th Cir. 2018) (affirming sanctions given that
15 attorney merely rented office space with no meaningful connection to it). Given that the need to
16 maintain an office for *pro hac vice* purposes parallels the need to maintain an office for purposes
17 of Local Rule IA 11-1(b), this case law is highly instructive.

18 In this case, Mr. Barrett has taken the position that he maintains an office in this District
19 and, therefore, did not need to comply with the requirements outlined in Local Rule IA 11-1(b).
20 See Docket No. 20.¹ Pressed by the Court to provide the factual details supporting that position,
21 it is abundantly clear that Mr. Barrett does not have a bona fide office in this District and instead
22 has an arrangement whereby he rents space from a local attorney at which he performs no work.
23 See Docket Nos. 29, 30. In particular, Mr. Barrett rents space from local attorney David Lee, an
24 acquaintance who attended the same law school as Mr. Barrett. Docket No. 30 at ¶¶ 11(a), 11(k).
25 Mr. Lee’s firm controls Suite 150 at the identified address, but has apparently designated sub-
26 suites for Mr. Barrett’s firm and six other entities. See Docket No. 30-1. In short, the physical

27 ¹ Mr. Barrett has since changed course, designating a resident attorney to act as associated
28 local counsel. Docket No. 24.

1 space of Suite 150 is purportedly shared by Mr. Lee’s law firm, Mr. Barrett’s law firm, a third law
2 firm, a gaming company, a realty company, two management companies, and a financial services
3 company. *See id.*

4 The factual circumstances show that this is not a bona fide office for Mr. Barrett. He has
5 been affiliated with this office location since January 2018. Docket No. 30 at ¶ 11(c). Nonetheless,
6 he is not regularly available there. *Id.* at ¶ 11(h). Indeed, he has not done any work there in the
7 last six months. *Id.* at ¶ 11(a).² He has not met clients there. *Id.* at ¶ 11(d). His firm has no
8 employees there. *Id.* at ¶ 11(b). He keeps no files there. *Id.* at ¶ 11(e). He does not receive phone
9 calls there. *Id.* at ¶ 11(f).³ He receives fewer than one piece of stray mail at this office per month,
10 and has his regular business mail sent to him directly in Arizona. *Id.* at ¶ 11(g). He does not
11 identify this office on his Nevada bar registration. *See White v. Martel*, 601 F.3d 882, 885 (9th
12 Cir. 2010) (court may take judicial notice of state bar records). He does not identify this office on
13 his CM/ECF registration with the Court. He does not identify this office on his law firm’s website.
14 *Id.* at ¶ 13.

15 Despite the above facts, Mr. Barrett contends that he was justified in representing to the
16 Court that he maintains an office here. In particular, Mr. Barrett points to the fact that he is entitled
17 to use Mr. Lee’s staff if the need arises and that they are authorized to accept service for him. *See*
18 *id.* at ¶ 11(a). Mr. Barrett also notes that there is what appears to be a changeable pin-board outside
19 the office that identifies his law firm as being in Suite 150C. *See id.* at ¶ 11(i); *see also* Docket
20 No. 30-1 (photograph). Mr. Barrett further states that he intends to use this Nevada office space
21 in the future. *See, e.g.,* Docket No. 30 at ¶ 11(a).⁴ None of those circumstances changes the fact
22 that Mr. Barrett has shown only that he rents office space from another attorney in Nevada that he

23 ² It is not clear whether Mr. Barrett has ever conducted work at this office, but his
24 declaration is limited to attesting that he has not worked at the office in the last six months. Docket
25 No. 30 at ¶ 11(a).

26 ³ This is not surprising given that it appears Mr. Barrett publishes only his Arizona phone
27 number. *See* Docket Nos. 30-2, 30-3; *see also* Docket No. 30 at ¶¶ 9, 11(f).

28 ⁴ Mr. Barrett’s positions are somewhat befuddling. On the one hand, he touts “[t]he virtual
nature of [his] office and practice.” Docket No. 30 at ¶ 8. On the other hand, he insists that “the
office space at issue here is more than simply a ‘virtual office.’” Docket No. 29 at 2.

1 has not to date used in any meaningful way. As the case law cited above demonstrates, such
2 circumstances fall well short of showing that Mr. Barrett maintains an office at the identified
3 Nevada location.

4 The Court also finds questionable the legal basis for Mr. Barrett's assertion that he
5 maintains an office in Nevada. Mr. Barrett indicates that he made that representation to the Court
6 in good faith and that the language of the local rule is imprecise. *See, e.g.*, Docket No. 29 at 2-3.
7 At the same time, Mr. Barrett acknowledges that he "admittedly did not research cases from this
8 Court, other jurisdictions, or cases in the *pro hac* context." Docket No. 29 at 2. The Court is
9 unclear as to how Mr. Barrett believed he was complying with his Rule 11 obligations, which
10 require legal contentions to be formed through a reasonable inquiry, Fed. R. Civ. P. 11(b), when
11 he responded to an order to show cause without conducting any legal research. His admission to
12 conducting no legal research is especially problematic given that basic legal research reveals that
13 an attorney does not "maintain an office" by renting space to which he has no meaningful
14 connection.⁵

15 Notwithstanding the above, the Court takes Mr. Barrett at his word that he believed in good
16 faith that he was complying with the letter and spirit of the rule. The Court is also mindful that
17 Mr. Barrett promptly associated local counsel as required by Local Rule IA 11-1(b) upon receipt
18 of the orders to show cause casting doubt on his assessment. The Court **CAUTIONS** Mr. Barrett
19 that moving forward he must present arguments that are factually and legally supported by a
20 reasonable inquiry. The Court also **CAUTIONS** Mr. Barrett that the Court expects strict

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22 ⁵ It is immaterial whether Mr. Barrett agrees that there is a need for this local rule. *See*
23 *O'Dea*, 2014 U.S. Dist. Lexis 186702, at *5 (rejecting argument that there is no need for a physical
24 presence in the district because "the Rule remains in place and compliance is expected").
25 Nonetheless, Mr. Barrett argues at some length that the purposes that animate the local rule are not
26 advanced by requiring that he maintain a bona fide office here because he has been successful in
27 conducting a virtual legal practice in several states. *See* Docket No. 29 at 3-4; *see also* Docket No.
28 30 at ¶ 8. In making that argument, Mr. Barrett relies on an order issued by the undersigned in
another case in which the Court cast doubt on whether the shared office space in that case satisfied
the requirement of the local rule, but deferred ruling on the issue. *See Masterson v. The Walt*
Disney Co., Case No. 2:18-cv-00989-JCM-NJK, Docket No. 12 (D. Nev. June 28, 2018). That
case was transferred to another district the following week, *see id.*, Docket No. 18 (D. Nev. July
3, 2018), so that issue was not revisited. The facts in that case were significantly different from
those presented here. *See, e.g., id.*, Docket No. 11 at ¶ 4 (attesting that the attorney actually used
the office space "for client and witness conferences, depositions, and mediations").

1 compliance with the local rules, including Local Rule IA 11-1(b), in this and other cases moving
2 forward. In all other respects, the order to show cause is hereby **DISCHARGED**.

3 IT IS SO ORDERED.

4 Dated: March 14, 2019

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8 Nancy J. Koppe
9 United States Magistrate Judge
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